

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In The Matter of)
)
Amendment of Section 2.106 of the) ET Docket No. 95-18
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use)
by the Mobile-Satellite Service)

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To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

THE AMERICAN PETROLEUM INSTITUTE

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SUMMARY

API urges the Commission to abstain from this 2.1 GHz reallocation until it has concluded other proceedings involving mobile communications services, particularly the 1.6 GHz MSS allocation, the PCS auctions, the wide area 800 MHz and 900 MHz SMR proceedings, and the Large LEO allocation. API urges the Commission to then closely examine the need, if any, for additional mobile communications services and to coordinate any MSS allocation with action taken at WRC-95.

If the Commission then determines that additional mobile communications services are needed, API endorses the Commission's proposal to provide displaced 2.1 GHz incumbents with fully comparable facilities. API also supports the Commission's proposal to require new licensees to pay the costs of relocation and to reinstate dissatisfied incumbents within their first year of relocation.

API urges the Commission to specify a three-year negotiation time frame similar to that used in other emerging technologies proceedings. This negotiation period should involve a two-year voluntary negotiation phase followed by a one-year mandatory negotiation period. API

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requests the Commission to permit incumbent licensees to retain primary status until they have operated for one year with the new facilities.

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**COMMENTS
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The American Petroleum Institute ("API"), by its attorneys, pursuant to the invitation extended by the Federal Communications Commission ("Commission") in its Notice of Proposed Rule Making ("Notice"),^{1/} in the above-referenced proceeding, respectfully submits the following Comments.

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration,

^{1/} 60 Fed. Reg. 11644, March 2, 1995. The dates for filing Comments and Reply Comments in this proceeding were extended to May 5 and June 6, 1995, respectively by Order of the Commission. 60 Fed. Reg. 13687, March 14, 1995.

production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications facilities, point-to-point and point-to-multipoint systems in the Private Operational-Fixed Microwave Service ("POFS") that is governed by Part 94 of the Rules and Regulations. These telecommunications facilities are used to support the search for and production of oil and natural gas. Such systems are also utilized to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, and for the processing and refining of these energy sources, as well as for their ultimate delivery to industrial, commercial, and residential customers. The

facilities licensed to API's members are therefore essential to the provision of our nation's energy sources.

3. API's members utilize POFS systems to serve a variety of vital point-to-point and point-to-multipoint telecommunications requirements, including communications between remote oil and gas exploration and production sites, for supervisory control and data acquisition (SCADA) systems, to communicate with refineries, and to extend circuits to remote pipeline pump and compressor stations. The oil and gas industries were among the pioneers in the development of private microwave, utilizing their systems to monitor and operate petroleum and natural gas pipelines.

4. Accordingly, the API Telecommunications Committee participated in the Commission's earliest rule making proceeding that addressed private microwave use of the spectrum; and it has continued to be an active participant in every subsequent major proceeding affecting the POFS. Consistent with this active involvement in telecommunications regulatory issues, the API Telecommunications Committee participated in nearly every phase of the Commission's Docket Nos. 90-314 and 92-9 that led to the reallocation of spectrum in the 2 GHz range for emerging technologies, including Personal Communications

Service ("PCS"), and to the adoption of reaccommodation provisions for those POFS licensees required to vacate their assignments.

II. COMMENTS

A. **The 1.6 GHz MSS Proceeding Should First Be Resolved**

5. In its First Report and Order and Further Notice of Proposed Rule Making in Docket No. 90-56, released June 11, 1993, the Commission allocated 33 MHz of spectrum for MSS in the 1530-1544 MHz and 1626.5-1645.5 MHz bands and proposed to allocate an additional 5 MHz at 1525-1530 MHz for MSS. To date, no further action has been taken by the Commission -- no applications have been accepted, no licenses have been granted, and no additional guidance has been issued. Despite this pending proceeding to place MSS at 1.6 GHz, the Commission has now proposed to designate additional spectrum for MSS by displacing the essential communications facilities of POFS, Common Carrier, and Broadcast Auxiliary Services (BAS) located in the 2.1 GHz range.

6. API respectfully submits that finalizing the 1.6 GHz allocation for MSS should take precedence over the

2.1 GHz allocation, particularly since the 1.6 GHz allocation is much less disruptive for incumbents. Unlike the 2.1 GHz proceeding, the 1.6 GHz allocation would not displace any existing facilities. Instead, it would allow co-sharing between MSS and Marine Mobile Satellite Systems.

7. The Commission has proposed to move ahead with a 2.1 GHz reallocation before it has been conclusively established that additional spectrum is needed beyond the 1.6 GHz allocation. API believes that the 1.6 GHz allocation would fully meet the needs of MSS providers.

B. There Is No Demonstrated Need for Additional Mobile Communications Services at This Time

8. The Commission invited comments in this matter on a proposal by CELSAT for an allocation in the bands 1970-2180 MHz and 2160-2180 MHz for a hybrid GSO/terrestrial personal communications service using code division multiple access technology. The agency also invited comments on a proposal by TRW for allocation of the bands 1970-2010 MHz and 2160-2200 MHz for the provision of international MSS by satellites in non-geostationary orbits. Finally, the Commission invited comments on a proposal by PCSAT to allocate spectrum in the bands 1970-1990 MHz and 2160-2180 MHz for a GSO satellite service.

9. In addition to these three requests, the Commission is presently undertaking numerous other proceedings involving mobile communications systems. API believes the marketplace for mobile communications services will be fully saturated once these other services are implemented. There is no demonstrated need for additional mobile communications services like that proposed in this proceeding.

10. The Commission is on the verge of authorizing as many as 6 PCS licensees for each geographic area (MTA and BTA) nationwide. Billions of dollars are currently being pledged at auctions to secure these PCS licenses, and similarly vast sums will be expended by providers, and ultimately consumers, to develop these PCS systems.

11. In addition, the Commission is currently developing licensing requirements for wide area 800 MHz and 900 MHz SMR systems. Like PCS, these SMR systems will provide extensive mobile communications services to countless consumers and businesses, and they will be costly to develop.

12. The Commission is also in the process of authorizing Large Low Earth Orbit (LEO) satellites designed

to provide mobile communications services to millions of customers. Large LEOs are costly as well; a single Large LEO costs over \$3 billion to deploy.^{2/} The Commission recently authorized three applicants in the band 1610-1626.5 MHz, but deferred consideration of the other two applicants because they have not satisfied the Commission's financial requirements.^{3/} As previously noted, the Commission has taken no conclusive action on a separate MSS proceeding to allocate 38 MHz in the bands 1525-1544 MHz and 1626.5-1645.5 MHz.

13. It is unclear to API whether the Large LEO systems will be economically feasible to place in operation, let alone become competitive with other existing and developing mobile communications systems. Consumers simply may not want or need redundant forms of mobile communications services.

14. It seems apparent that the majority of consumer demand for mobile communications services will be met by PCS. PCS licensees are required to offer service to one-third of the population of their service area within five

^{2/} Washington Telecom Week, February 3, 1995, at 10.

^{3/} FCC News Release, Report No. IN 95-4, January 31, 1995.

years of being licensed, and to fully 90% of their service area within ten years of being licensed.

15. When combined with existing and planned terrestrial cellular systems, the PCS, SMR, LEO and 1.6 GHz MSS will saturate the country, and eventually the globe, with redundant mobile communications services.^{4/} API submits that the Commission has not adequately explored whether there will be a need for the additional mobile communications allocation which is proposed in the Notice for the 2.1 GHz reallocation. The three 2.1 GHz petitioners -- TRW, Inc., CELSAT, and PCSAT -- failed to submit detailed marketing surveys to justify their claim that MSS is needed beyond that to be provided through the 1.6 GHz MSS and Large LEO proceedings.^{5/} Before seriously

^{4/} This saturation is evidenced not only by the numerous unresolved regulatory proceedings pending before the Commission, but by the decreasing availability of financial backing for largely speculative satellite systems, such as the Large LEO and MSS projects, when compared to PCS and SMR systems. See, FCC News Release, Report No. IN 95-4, January 31, 1995.

^{5/} TRW's application for its Odyssey satellite system is the second such application; TRW also applied for the 1.6 GHz allocation. TRW bases its assertion that additional spectrum is needed for MSS on the inability of the six applicants for MSS at 1.6 GHz to agree on spectrum sharing. See, TRW, Inc., Petition for Rule Making, December 8, 1993, at 4. This bald assertion hardly constitutes sufficient evidence of demand for additional MSS.

(continued...)

disrupting BAS, Common Carrier Microwave Services, and POFS, API submits that the Commission should require the MSS applicants to submit tangible marketing data in place of the conclusory statements found in their submissions.

16. In contrast to MSS, POFS needs the 2.1 GHz band. The POFS operating in this band are customized to meet the specific industrial, public safety, and commercial requirements of many companies and public agencies that constitute much of the infrastructure of this nation. These POFS are frequently the cornerstone of supervisory and operational programs designed to deliver essential products and services to the public. Accordingly, API urges the Commission to refrain from relocating these essential POFS

5/ (...continued)

CELSAT states in its Petition for Rule Making that its Hybrid Personal Communications Network (HPCN) would operate most efficiently at the L/S Band, which is 1610-1626 MHz and 2483.5-2500 MHz, being considered in the 1.6 GHz proceeding. See, CELSAT, Petition for Rule Making, February 6, 1992, at 32. In addition, CELSAT fails to provide any marketing data to reflect consumer demand for its HPCN service.

PCSAT cites a PCIA study forecasting growth in the mobile communications services industry; that study, however, included all six services: PCS, cellular, paging, satellite, SMR and dedicated data. See, PCSAT, Petition for Rule Making, April 7, 1994, at 5. PCSAT failed to show whether PCIA developed demand projections for MSS alone. In the Application attached to its Petition for Rule Making, PCSAT merely stated its anticipated MSS revenue without giving the source of this information or indicating whether marketing studies were actually performed. See, PCSAT, Application, April 7, 1994, at 47.

until the Commission completes its other proceedings involving mobile communications services and then fully evaluates the need, if any, for additional mobile communications services.

C. No Action Should Be Taken Until International Standards Are Established at WRC-95

17. The Commission's proposal may be inconsistent with spectrum allocations to be made at the World Radio Conference (WRC-95), the international telecommunications conference to be held in October and November 1995. At present, there is no international allocation for MSS in the band 2010-2025 MHz. In addition, the bands 1970-1980 MHz and 2160-2170 MHz are only allocated to MSS on a co-primary basis in Region 2, which includes the United States. Thus, there are no international MSS allocations for large portions of the spectrum targeted by the Commission in this 2.1 GHz proceeding.

18. Although the Commission proposed in its Notice to pursue international MSS allocations at WRC-95, API submits that until WRC-95 designates additional portions of the spectrum for MSS, the Commission's 2.1 GHz proposal is premature. Otherwise, the 2.1 GHz proceeding could result in a grant of spectrum for MSS for the United States which

later turns out to be inconsistent with international allocations, as well as Region 2 allocations. This could cause significant interference with other Region 2 nations, most notably Canada and Mexico, and retard the development of the American satellite system(s).

19. API submits that the Commission should coordinate MSS allocations with international standards to be established at WRC-95, just as the Commission coordinated the 1.6 GHz proceeding with WARC-92. In the 1.6 GHz proceeding, the Commission indicated in its First Report and Order and Further Notice of Proposed Rule Making (FCC Docket No. 90-56), that it proposed the MSS allocation in order to

[I]mplement changes sought and achieved at the 1992 World Administrative Radio Conference (WARC-92), place the United States on a par with other countries that are advancing MSS systems, and facilitate international coordination for use of this spectrum.

20. In its Notice, the Commission invited comment on a possible alternative plan whereby the agency would reallocate only the 40 MHz at 1990-2010 MHz and 2180-2200 MHz that was allocated at WARC-92 and would defer action on the additional spectrum until WRC-95 deliberates the appropriate 2 GHz allocation. API believes this alternative proposal correctly recognizes the advantages of

waiting until WRC-95 has taken action, but that this alternative proposal still goes too far. By allocating a portion of spectrum now and waiting until later to complete the job, the Commission would be subjecting itself and private entities to redundant and perhaps unnecessary relocation.

21. A final alternative put forth by the Commission in its Notice is to allocate 60 MHz at 1990-2020 MHz and 2170-2200 MHz. Again, API urges the Commission to wait until completion of WRC-95 before proposing additional MSS allocations.

D. Relocation Issues

22. Petroleum is a potentially hazardous material which must be produced and transported with the least possible risk to the public. Relocation of communications services causes inherent uncertainty and risk. In the case of BAS or Common Carrier systems, relocation to an inferior communications system could cause minor inconvenience to the public such as lower transmission quality for a live newscast or static on a long-distance telephone call. But for API member companies, relocation to inferior communications systems could delay detection of an abnormal

condition and emergency response operations, and thereby cause serious risk to the public's safety.

23. Therefore, API strongly supports the Commission's proposal to require new MSS licensees to provide comparable communications facilities for displaced POFS incumbents. API additionally endorses the Commission's proposal to compel licensees to demonstrate that the replacement facilities are comparable to the former facilities and, if not, to provide one year in which to reinstate incumbents to their former facilities until comparable facilities are achieved. API supports the Commission's proposal to require new licensees to pay the full costs of relocation to comparable facilities.

24. API believes this is an opportune time for the Commission to adopt a clearer definition of what constitutes "comparable facilities." API points out that the American petroleum and gas industries have developed some of the best POFS systems in the world for the safe and efficient discovery, production, and delivery of energy resources. API member companies wish to maintain the high level of communications service which they have attained over the years. By developing a comprehensive definition of "comparable facilities," the Commission would reduce the

likelihood of future misunderstandings about comparability and encourage prospective licensees to fully gauge their costs of doing business before becoming licensees.

25. The proposed 2.1 GHz reallocation provides no transition mechanism for existing licensees or systems proposed in pending applications. In Footnotes 15 and 16 of the Notice, the Commission summarily adopts the procedural characteristics of the previous emerging technologies proceedings. API urges the Commission to specify a three-year negotiation period for incumbents and licensees similar to that utilized in previous emerging technologies proceedings.^{6/}

26. In its Notice, the Commission proposed to eliminate primary status after January 1, 1997 for any POFS which is notified of a request for mandatory relocation. API urges the Commission to retain primary status for POFS until a displaced POFS incumbent has spent one year operating at the comparable facilities.

^{6/} See First Report and Order and Third Notice of Proposed Rule Making, ET Docket No. 92-9, 7 FCC Rcd 6886 at 6890 (1992).

III. CONCLUSION

27. API urges the Commission to refrain from proceeding with this 2.1 GHz reallocation until the agency has concluded the other matters which provide alternative sources of mobile communications services. These other proceedings include the 1.6 GHz MSS allocation proceeding, the PCS auctions, the wide area 800 MHz and 900 MHz SMR proceedings, and the Large LEO proceeding. In addition, the Commission should await resolution of the international MSS allocation issues at WRC-95 before allocating the 2.1 GHz band to MSS.

28. API urges the Commission to closely examine the need, if any, for additional mobile communications services and to act in accordance with WRC-95 allocations for MSS. If relocation of incumbent services in favor of additional mobile communications services appears warranted, API supports the Commission's proposal to provide displaced incumbents with fully comparable facilities. API also agrees that the new licensees should be required to pay the costs of relocation and to reinstate dissatisfied incumbents within their first year of operation with the new facilities.

29. API requests the Commission to clarify the time frame for negotiations and to recommend a three-year negotiation time frame. This negotiation period should involve two years of voluntary negotiation followed by one year of mandatory negotiation. API urges the Commission to specify primary status for incumbent users until each displaced licensee has spent one year operating with the comparable facilities.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute Telecommunications Committee respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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